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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

**OPPOSITION TO PETITIONS FOR RECONSIDERATION OF
RCN TELECOM SERVICES, INC. AND US XCHANGE, L.L.C.**

RCN Telecom Services, Inc. ("RCN"), and US Xchange, L.L.C. (US Xchange), through their undersigned counsel, hereby submit their Opposition to Petitions for Reconsideration of the Federal Communication Commission's ("FCC") Second Report and Order in the above-referenced proceeding.¹

I. THE FCC MUST REJECT THE PSP PETITIONS FOR RECONSIDERATION AND SHOULD INSTEAD DECREASE THE DEFAULT RATE FOR COINLESS CALLS

It is incredible that PSPs, after receiving a default rate for coinless calls far above their costs and by all accounts a "windfall," have the audacity to suggest that the default rate should be increased. To the contrary, while the FCC correctly decreased the default rate from 35¢, it did not nearly go far enough. PSPs should be compensated at a rate that closely reflects their costs and should not be permitted to receive windfall profits at the expense of consumers. Accordingly, the default rate should be decreased further.

¹ See *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Report and Order (October 9, 1997) ("Second Report and Order").

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A. The FCC Erroneously Set a Market Rate For Coinless Calls

It its Second Report and Order, the FCC again assumes that a market-based rate for local coin calls should be the starting point for setting the default rate for coinless payphone calls. The FCC's assumption suffers from the same unsupported and illogical leap that caused the D.C. Circuit to vacate the FCC's default rate for coinless calls in its First Report and Order: "[t]he default [compensation] rate ... is inexplicably tied to a local coin rate." Illinois Public Tel. Assoc. v. FCC, 117 F.3d 555, 564 (D.C. Cir. 1997).

There is no evidence or rationale in the Second Report and Order to support using a market-based local coin rate as the starting point for a coinless rate. Moreover, there is evidence to the contrary which the FCC should now take into account. First, there is no market rate for coinless calls, and the theoretical ability of an IXC to block calls from a particular payphone does not create one. As AT&T points out in its Petition for Reconsideration, the market for local coin calls and the market for coinless calls are different. See also, Emergency Motion for Stay Pending Judicial Review and for Expedited Consideration and Briefing Schedule ("MCI Stay Petition"), No. 97-1675, at 8-10 filed by MCI and others with the D.C. Circuit.

Setting aside the fact that many payphones enjoy locational monopolies, consumers who place local coin calls from payphones have some theoretical choice. A consumer confronted with a \$.50 local coin rate might seek a different payphone or forego using a payphone. Moreover, the consumer is the direct purchaser of a complete service. Thus, the consumer elects whether to make a local payphone call, deposits his coins, and the PSP completes the call. On the other hand, when a consumer places a coinless call, the consumer is not aware of the rate charged by the PSP and in most

instances doesn't care. Nor does the consumer compensate the PSP, the underlying carrier does.

Moreover, the argument that a carrier's ability to block coinless payphone calls somehow creates a market force, similar in effect to a consumer's choice when making a local coin call, is unsound. Call blocking is costly, and rather than putting competitive pressure on a PSP to lower its rates, the likely effect of such blocking will be to limit public access to payphones. In many cases, limiting access to payphones, through call blocking, will have devastating consequences for businesses and the ultimate consumer. In summary, coin and coinless payphone calls represent distinct products and are subject to distinct market forces.

The absence of the competitive pressure in the payphone market is also supported by substantial evidence showing that the costs of providing coinless payphone service generally is far less than the 28.4¢ per call guaranteed by the FCC.² Indeed, from a historical perspective, common sense compels this conclusion. The fact of the matter is that payphone companies have been operating for many years as profitable ventures. If these PSPs have been uncompensated for coinless calls, and those calls have been as costly to provide as claimed, simple math indicates that it would be virtually impossible to operate at a profit. However, PSPs clearly have been profitable, and now that they have been permitted to raise their rates, and charge for coinless calls, they will become wildly profitable at the expense of the consumer. As the Consumer-Business Coalition for Fair Payphone 800 Fees ("800 Coalition") noted, many businesses that rely on 800 calls, such as airlines, trucking companies, and emergency services will not be able to absorb the increase cost of this

² Although the Commission's attempts to deduct incremental avoided costs from a presumed local coin market rate, this approach is not only a fundamentally flawed apples to oranges approach, but does not deduct profit on these incremental costs, overstates flex ANI implementation and understates call completion costs. AT&T Recon. at 17-20.

payphone surcharge. Because they will have to recover their costs, the PSPs' excessive profits will be paid for by higher airline ticket prices, higher transportation costs, higher costs of goods and services dependent upon consumer access to 800 numbers, and the untold impact on consumers seeking access to various 800 number emergency services. *See* 800 Coalition Petition, at 14.

There is also substantial evidence in the record, as well as significant new evidence that has been provided by AT&T, showing that PSPs will earn supracompetitive profits under the current compensation scheme.

First, the assumed market rate for both coin and coinless calls - 35¢ - is based upon the least efficient competitors, independent payphone providers, and the highest rates charged in the payphone market, the rate charged in five rural states. These rates are not representative and cannot reasonably serve as the basis for setting national rates. As AT&T points out, the rate of the average payphone is not 35¢, but rather 25¢, using the data the FCC relied upon in setting the presumed market rate.

Additionally, cost data submitted by AT&T concerning Southwestern Bell's ("SWB") payphone costs; data provided by Sprint concerning its payphone costs; and data provided by NYNEX to the Massachusetts DPU all demonstrate that the costs of providing payphone service are dramatically less than the presumed market rate of 35¢. The refusal of the RBOC Coalition to produce any usable cost data only serves to strengthen this conclusion.

Evidence concerning SWB shows that the total cost of a payphone call is only 19.5 cents, including the cost of commissions, or 16.2¢ excluding this cost. Using the FCC's adopted default rates, this would yield profits of between 80 and 116% for coin calls, and between 120% and 196% profit for coinless calls, depending upon whether commission costs are included.

The accuracy of the SWB data is evidenced by data NYNEX reported to the Massachusetts

DPU to support a 25¢ coin rate. NYNEX reported average costs of 16.7¢ per call. Even assuming that this cost represents an average total cost for both coin and coinless payphone calls, NYNEX's profit, using the FCC's default rate, would be at least 110%.

Sprint data, perhaps the most objective because Sprint is both a PSP and an IXC, with corresponding economic incentives on both sides of the equation, has offered cost data that supports the reasonableness of both the SWB and NYNEX data. Sprint estimates that its average total costs per payphone per month is \$100, and less than 25¢ per call based upon actual call volumes. AT&T Petition, at 13-14.

The FCC must also recognize that these costs noted above represent the PSPs' cost to carry *coin calls*. Costs to carry coinless calls are necessarily lower. For example, when completing a local coin call the PSP bears the costs associated with originating and completing the circuit; by contrast, when handling a subscriber 800 or access code call, the PSP bears only costs associated with origination.³ In addition, the local coin rate includes costs associated with usage and coin collection costs. The PSP, however, does not incur these costs when it originates a subscriber 800 or access code call.⁴ Thus, the cost evidence as noted above, show tremendous profits when comparing the default rate for *coinless calls* with the cost of providing *coin calls*. When the FCC takes into account the lower costs for providing coinless calls, the profit margin of the PSPs edges closer to 150%. This

³ The IXC also incurs originating access charges for completing its subscriber 800 or access code calls. Under the current mechanism, therefore, subscriber 800 or access code calls originating from a PSP could foreseeably be subject to double originating access charges.

⁴ These costs include: repair and maintenance costs associated with coin capable equipment; having someone empty coins from the payphones; thefts from coin operated payphones; as well as the ongoing necessity to engage in "coin rating" and billing. The PSP does not have to bear any of these costs when its phones are used to originate subscriber 800 and access code calls.

level of profit at the expense of the public is completely unacceptable.

The FCC's rejection of this probative evidence that its default rate will result in windfall profits cannot stand. The only way to assure that PSPs are "fairly" compensated as required by statute is to require reliable cost studies using a single methodology, such as TSLRIC or TELRIC, as determined in a proper proceeding. The FCC's rejection of cost studies because they "could reduce revenue recovered by the PSPs, and therefore, might reduce the number of payphones deployed" proves the point. Second Report and Order at ¶ 93. The payphone statute, 47 USC § 276, neither permits nor requires consumers to subsidize PSPs. And, there is not a shred of evidence to suggest that there will be fewer payphones if PSPs are fairly compensated, rather that invited to earn the excessive profits guaranteed by the Second Report and Order.

B. The PSP Arguments Are Based on Faulty Presumptions and Must be Rejected

The FCC must also reject the PSP arguments that the 28.4¢ default rate should be increased. Contrary to the claims of the RBOC/GTE/SNET Coalition ("Coalition") and the American Public Communications Council ("APCC"), if the FCC decides to use a market-based rate for coin calls, it must subtract coin-related costs from that rate. It is clear that there are costs implicated in placing a coin call that are avoided when a consumer makes an access code or 800 call. These costs should not be borne by consumers of coinless calls.

For example, the Coalition's and APCC's arguments for allocating the costs of the coin mechanism to all calls only provides further support that these costs should be borne completely by coin calls. The Coalition and APCC argue that the coin mechanism should be attributed to all calls because there are not enough coinless calls in most locations to support a coinless payphone. Coalition Petition, at 8-9; APCC Petition, at 9-11.

The Coalition and APCC actually prove that recovery of coin mechanism costs from coinless calls is completely unnecessary and would be a windfall to payphone owners. As the Coalition and APCC recognize, the vast majority of calls made from payphones are still coin calls. Accordingly, apart from PSP protestations that they are being deprived of revenue necessary to stay in business, in fact, they are and always have been compensated for the vast majority of their calls. Therefore, there is no reason to recover the costs of the coin mechanism from coinless calls, because these costs are already being recovered from the coin calls.

The FCC should also reject any increase in the default rate for bad debt and collection costs. Because the track and call mechanism has just recently been implemented, there is no way to accurately measure any costs to payphone providers due to bad debt and collection costs. Until accurate information is gathered and provided, the FCC cannot even consider adding any costs to recover this alleged expense.

Moreover, the FCC should decrease the default rate by the additional cent it added to allegedly cover PSP costs for paying LECs \$600 million for implementing Flex ANI. As AT&T notes in its Petition for Reconsideration, in setting this amount, the FCC relied entirely on cost estimates from USTA. AT&T Petition, at 19. However, USTA has since revised its estimate to one tenth of its former figure, \$61.2 million. Accordingly, the 1¢ addition in costs should be no more than one tenth of one cent.

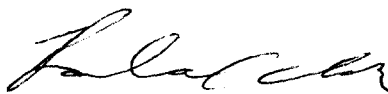
Finally, the FCC correctly rejected the Coalition's theories on demand elasticity. Even if the FCC were to take elasticity of demand into account when setting the default rate, there is absolutely no evidence that the demand for coinless calls is more elastic than the demand for local coin calls. Indeed, as explained by the 800 Coalition, the demand for coinless calls may actually be more elastic

than the demand for local coin calls. As noted by the Petition, if the rate for coinless calls stays at 28.4¢, many 800 customers will make the decision to block calls from payphones, thereby completely curtailing their use of payphones. 800 Coalition Petition, at 14. Therefore, it cannot be said that the purchasers of coinless calls will be willing to continue to use the payphone service even in light of an increased price.

II. CONCLUSION

For the foregoing reasons, RCN and US Xchange respectfully requests that the FCC act in accordance with the recommendations set forth above.

Respectfully submitted,



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Dated: December 11, 1997

CERTIFICATE OF SERVICE

I, Jolanda Tedford, hereby certify that a copy of the foregoing **Oppositions of Petitions to Reconsideration of RCN Telecom Services, Inc. and US Xchange, L.L.C., CC Docket No. 96-128** was sent to each of the following parties by hand delivery (denoted with asterisk) and regular mail on this 11th, day of December, 1997.

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